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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,389	12/10/2001	Jean-Noel Thorel	108961.01	8418

7590 09/22/2003

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P.O. Box 19928  
Alexandria, VA 22320

EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 09/22/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

10/006,389

Applicant(s)

THOREL, JEAN-NOEL

Examiner

Susan Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-16 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-16 and 21-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

1. The amendment filed June 30, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 4 and 17 have been cancelled.
3. Claims 23-29 have been added.
4. Claims 1-3, 5-16, and 18-29 are pending.
5. In Paper No. 6, dated December 2, 2002, applicant's elected with traverse Group I, claims 1-16 and 21-29, amino acid for at least one of the biodermal constituent and trace elements for the non-biodermal constituent.
6. Claims 18-20 are withdrawn from consideration.
7. Claims 1-3, 5-16, and 21-29 are examined on the merits.

### ***Claim Rejections - 35 USC § 103***

8. Claims 1-3, 5-16, and 21-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/05629 and US Pat. No. 4,863,897 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that WO '629 does not teach a composition that has the claimed amounts of biodermal and nonbiodermal constituents. However, amino acids, vitamin E, fatty acids, polyols, and animal hormones can all be found in the skin. The only ingredient in the composition of WO '629 that cannot be found in the skin is the plant extract. Therefore, using the maximum amounts of biodermal constituents and the minimum

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amount of nonbiodermal constituents allowed by WO '629 yields a product that contains 127 parts biodermal constituents and 3 parts nonbiodermal constituents. This is 97.7% biodermal and 2.3% nonbiodermal. These amounts are extremely close to the amounts claimed by applicant, but they are not exactly the same. However, WO '629 does state that "at least" 100 parts of amino acids and "at least" 3 parts of animal hormone are used. Therefore, the reference teaches that the amounts of the ingredients can be varied. Thus, a person of ordinary skill in the art would be motivated to modify the amounts of constituents in the composition to increase the amount biodermal constituents.

Applicant also argues that a person of ordinary skill in the art would not be motivated to combine WO '629 with US '897 because US '897 uses mainly non-biodermal constituents while WO '629 uses biodermal constituents. However, both references are directed towards using natural substances in cosmetic compositions. Therefore, they are considered to be from analogous art. US '897 teaches using very small amounts of trace elements (see claims). Thus, a person of ordinary skill in the art would reasonably expect that the amounts of trace elements used in a composition can be very small and still have a positive cosmetic effect on the skin.

9. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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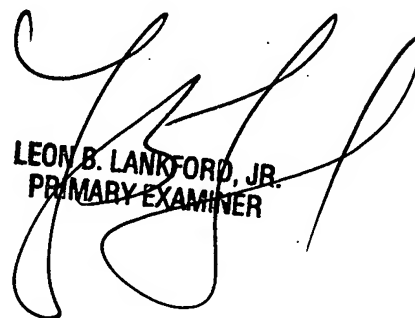
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
September 15, 2003

  
LEON B. LANKFORD, JR.  
PRIMARY EXAMINER